IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :- 17.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No.2105 of 2004
and
W.A.M.P. No.3865 of 2004

Savithiriammal ... Petitioner/Appellant

vs.

1. The State of Tamil Nadu,
rep. by Secretary
to Government,
Housing and Urban Development
Department, Fort St. George, Madras-9.

2. Special Tahsildar (Land Acquisition),
Housing Scheme No.II,
Coimbatore-18. ... Respondents/Respondents

Writ Appeal against the order of the learned single Judge dated 07.02.2004 in W.P. No.18730 of 1996 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent relating to G.O.MS.No.506 Housing and Urban Development Department LA.3(2) dated 17.5.1995 (Published in the Tamil Nadu Govt., gazette No.23A dated 14.6.95) and the G.O.MS.No.291 Housing and Urban Development Department dated 17.6.96 quash the same.

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For Appellant : Mr.A.S.Vijayaraghavan
For Respondents : Mr.M.Dhandapani,
Addl. Govt. Pleader.

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal has been filed against the order of the learned single Judge, dated 07.02.2004, made in W.P.18730 of 1996, in and by which, the learned Judge quashed the declaration issued under Section-6 of the Land Acquisition Act and permitted the Government to proceed further by issuing another Declaration under Section-6 within the prescribed time limit. Not satisfied with the limited relief granted, the Writ Petitioner has filed the above Appeal.

2. Heard Mr.A.S.Vijayaragavan, learned counsel for the appellant and learned Additional Government Pleader for the respondents.

3. At the foremost, learned counsel for the appellant submitted that the writ petitioner/appellant is the daughter of one Thiruvenkatasamy, who owned lands in S. Nos.267/5 and 268/3, Ganapathi Village, Coimbatore Taluk. According to him, the said lands and other surrounded lands were sought to be acquired at the instance of the Tamil Nadu Housing Board for construction of houses under Ganapathi Neighbourhood scheme, Phase-II. It is further pointed out that the petitioner's father Thiruvenkatasamy died way back on 06.3.1987, however, Notification under Section 4(1), which was published in the Government Gazette on 14.06.1995, was issued in the name of the said Thiruvenkatasamy-dead person. It is also brought to our notice that the petitioner/appellant, on hearing the news that the authorities are taking steps to acquire her father's lands, submitted her objection, wherein, it is specifically stated that her father died long back leaving behind herself as the only legal heir. She also mentioned that the notice/Notification issued on dead person is illegal, improper and void. She further stated that though this aspect was specifically pointed out during the 5-A enquiry, even in the subsequent declaration, the respondents did not carry out necessary changes and issued the same only in the name of dead person, ie., Thiruvenkatasaamy. In such circumstances, according to the counsel, the learned Judge, having accepted the case of the petitioner, ought to have quashed the entire proceedings including Notification under Section 4(1).

4. We verified the 4(1) Notification, 5-A enquiry proceedings and Sec.6 Declaration. As rightly pointed out, in the Notification and Declaration, it is stated that Thiruvenkatasamy is the owner of the lands in S. Nos.267/5 and 268/3. We have already referred to the written objection filed by the petitioner, who is none else than the daughter of the said Thiruvenkatasamy, to the effect that her father died on 6.3.1987. In such circumstances, it is but proper on the part of the Land Acquisition Officer to rectify the mistake in all the proceedings including 4(1) Notification. The Notification issued in the name of dead person is a nullity and the proceedings cannot be continued based on the said Notification.

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5. This Court, in Muthusamy v. The State of Tamil Nadu (1993 (1) M.L.J. 217); Devaraj v. State of Tamil Nadu (2003 (4) CTC 134); Asiya Mariyan v The Secretary to Government of Tamil Nadu (2000 (4) CTC 125); and in series of other decisions, held that Notice/Notification issued in the name of dead person and the proceedings with respect to the said lands cannot be sustained. By applying the said principle, we accept the contention of the learned counsel for the appellant and quash the Notification issued under Section 4(1), dated 14.06.1995. Consequently, Writ Appeal is allowed. No costs. Connected Miscellaneous Petition stands closed. It is made clear that the respondents are free to proceed with the acquisition, if they so desire, by initiating fresh proceedings in accordance with law.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Madras-9.

2. Special Tahsildar (Land Acquisition),
Housing Scheme No.II,
Coimbatore-18.

1 cc To Mr.A.S.Vijaya Raghavan, Advocate, SR.25362.
1 cc To The Government Pleader, SR.25433.

W.A. No.2105 of 2004
& connected WAMP.

GG(CO)
RVL 27.06.2006

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